APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

NO. 80-3774

GERALD V. CONROD, JR.,

Plaintiff-Appellant,

vs.

JEEP CORPORATION; INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE and AGRICULTURAL IMPLEMENT WORKERS OF AMERICA; UAW LOCAL 12; DOMINIC J. MATTONI; BOOKER HARRIS,

Defendants-Appellees.

O R D E R
DENYING PETITION
FOR REHEARING

FILED: May 25, 1982

Before: BROWN and KENNEDY, Circuit Judges; and CELEBREZZE, Senior Circuit Judge

The Court has not favored rehearing en banc in this case so the petition for rehearing has been referred to the hearing panel for our consideration.

The Court's order of March 4, 1982,

disposed of appellant's claim that he was the victim of reverse racial discrimination on the ground that because the only authority appellant cited in support of his claims was McDonald v. Santa Fe Transportation Co., 427 U. S. 273 (1976) and McDonald was a Title VII case, the claim should be construed as arising under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. Because appellant had not first filed a charge with the Equal Opportunity Employment Commission (EEOC) we ruled that his Title VII discrimination claim could not be raised in the federal court. Appellant's petition for rehearing brings to the Court's attention that McDonald was a suit not only under Title VII, but also under the Civil Rights Act of 1866, 42 U.S.C. § 1981. Therefore, we consider

appellant's contention that he should be permitted to proceed on a claim that he was the victim of reverse discrimination under section 1981.

Filing a charge with the EEOC is not a prerequisite to suit under section 1981. However, appellant is still entitled to no relief on appeal. He did not fairly raise this cause of action prior to entry of judgment by the District Court. His complaint does not mention racial discrimination, and in context the sporadic references to race in appellant's other pre-judgment pleadings are insufficient to put the parties or District Court on notice that racial discrimination was a ground on which appellant claimed relief. In fact, in his deposition appellant states that he is <u>not</u> claiming that he was dis-

criminated against.

Further, even if the discrimination issue was raised, appellant offered only the most conclusory statements in support thereof prior to judgment. Such conclusory allegations are not sufficient to withstand appellees' motions for summary judgment under Fed. R. Civ. P. 56. Bryant v. Commonwealth of Kentucky, 490 F.2d 1273, 1275 (6th Cir. 1974).

Finally, there is no such evidence of racial discrimination in appellant's post-judgment Rule 59 motion for us to find that the District Court's refusal to vacate or amend its judgment was error, much less an abuse of discretion. See Huff v. Metropolitan Life Ins. Co., No. 81-3030, slip op. at 4 (6th Cir., Apr. 13, 1982). Accordingly, construing appellant's discrimination claim as arising under Sec. 1981, we still are not persuaded to re-

verse the District Court's entry of summary judgment in favor of appellees.

All of the other issues raised in appellant's petition for rehearing were adequately considered and disposed of in the order of March 4. Accordingly, the petition for rehearing is denied.

ENTERED BY ORDER OF THE COURT

/s/ John P. Hehman
John P. Hehman, Clerk

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

NO. 80-3774

GERALD V. CONROD, JR.,

Plaintiff-Appellant,

vs.

JEEP CORPORATION; INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE and AGRICULTURAL IMPLEMENT WORKERS OF AMERICA; UAW LOCAL 12; DOMINIC J. MATTONI; BOOKER HARRIS,

Defendants-Appellees.

O R D E R

FILED: March 4, 1982

Before: BROWN and KENNEDY, Circuit Judges; and CELEBREZZE, Senior Circuit Judge

Apellant Gerald V. Conrod, Jr., brought this suit pursuant to section 301 of the Labor Management Relations Act, 29 U.S.C. Sec. 185, alleging that appellee Jeep Corp. wrongfully terminated him in violation of the collective bargaining

agreement between Jeep and Local 12 of the United Automobile, Aerospace, and Agricultural Implement Workers of America. The complaint further alleged that Local 12 breached its duty of fair representation by not taking his grievance on his discharge to arbitration. The District Court granted appellees' motions for summary judgment.

Appellant was hired by Jeep as a spray painter in 1974. During the next several months he was disciplined five times for absenteeism. On October 10, 1975, appellant was working in a spray booth through which the assembly line ran. "Playfully" testing his strength, he lifted a chassis off the assembly line and failed to replace it properly. For this he was reprimanded by his foreman, Mr. Haggerman. Appellant argued with the foreman, then sprayed his paint gun toward the wall for a five to eight second period. In the process, appellant

sprayed a paint thinner container that had to be kept free of paint to clean properly the nozzles of spray guns. The foreman fired appellant for sabotaging company property.

Appellant complained to his union steward, who met with Haggerman and other company officials in an unsuccessful attempt to have appellant reinstated. The union steward advised appellant to file a grievance and assisted him in preparing it. The grievance was taken through the second and third steps by Local 12, but the foreman concluded that he had already given appellant too many chances and refused to reinstate him.

Appellant retained private counsel, who eventually learned that Local 12 had decided not to take appellant's grievance to arbitration and that appellant had exhausted his intra-union remedies at the local level.

Counsel also learned that further appeal to the International was available. Appellant did not pursue this remedy, choosing instead to file this action.

The District Court ruled that exhaustion of intra-union remedies is a prerequisite to suit under section 301 for breach of the duty of fair representation, unless exhaustion would be futile. Although appellant made a weak allegation of futility, he also filed an affidavit saying he did not try to exhaust because he thought it would take too long, and because his attorney advised him that he had no right of appeal. The court found this imsufficient to warrant an exception to the exhaustion requirement and granted Local 12's motion for summary judgment. As to appellee Jeep, the court found no question but that there was just cause to fire appellant, so granted Jeep's motion for

summary judgment on the charge that it violated the collective bargaining agreement.

After the motions for summary judgment were granted appellant presented the District Court with a further affidavit and moved under Fed. R. Civ. P. 59 to have the summary judgment set aside. The court ruled that the new evidence was merely an embellishment of the old, and denied the motion.

On appeal appellant claims: (1) He was denied fair representation because Local 12 did not inquire whether any damage was actually done to Jeep, and he was not guilty of sabotage unless he had an intent to do actual damage; (2) Both Local 12 and Jeep were motivated by reverse racial discrimination in their handling of his case; (3) Appellant's interrogatories to Local 12 going to the futility of intra-union remedies should have been answered

before Local 12's motion for summary judgment was granted; (4) Appellant was denied fair representation when Local 12 concealed from him the fact that it had dropped his grievance until after the time to appeal to it and the International had expired; (5) The summary judgment should have been set aside because promptly after it was granted appellant presented the District Court with evidence sufficient to state a claim for relief.

To prevail under section 301 against either the UAW or Jeep, appellant must establish both that the UAW breached its duty of fair representation and that Jeep violated the collective bargaining agreement. Clayton v. International Union, United Automobile, Aerospace, and Agricultural Implement Workers, 49 U.S.L.W. 4550, 4552 n.4 (1981); Hines v. Anchor Motor Freight, Inc., 424 U.S. 554, 570-571

(1976). In this case the District Court found that appellant was fired for just cause. The only issue appellant raises that arguably challenges this finding is the last -- that the postjudgment affidavit submitted to the court stated a claim for relief. The only evidence helpful to appellant in the affidavit is a claim that several other employees were not fired for doing similar acts. This evidence, which if true still does not establish that appellant was not fired for just cause, does not warrant reversing the District Court's grant of summary judgment. Appellant offers no evidence to support his allegation that intent to do damage is a prerequisite to firing for sabotage.

We treat appellant's claim of racial discrimination as an allegation under Title VII of the Civil Rights Act of 1964, 42 U.S.C. Sec. 2000e et seq., since the

only authority appellant cites in support of his claim is McDonald v. Santa Fe Transportation Co., 427 U.S. 273 (1976), a case brought under Title VII. It is clear that a condition precedent to filing a lawsuit under Title VII is the filing of a charge with the Equal Employment opportunity Commission and the receipt of a right to sue letter. Equal Employment Opportunity Commission v. MacMillan Bloedel Containers, Inc., 503 F.2d 1086, 1092 (6th Cir. 1974). Appellant has done neither.

Accordingly, the judgment of the District Court is affirmed.

ENTERED BY ORDER OF THE COURT
/s/ John P. Hehman,
John P. Hehman, Clerk

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

Civil No. C 77-562

Gerald V. Conrod, Jr.,

Plaintiff,

vs.

Jeep Corporation, et al.,

Defendants.

OPINION AND ORDER

FILED: Oct. 15, 1979

Before: YOUNG, J.

The complaint, brought pursuant to Sec. 301 of the Labor Management Relations Act, 29 U.S.C. Sec. 185, alleges that defendant Jeep Corporation (Jeep) breached the collective bargaining agreement with defendant United Automobile, Aerospace and Agricultural Implement Workers of America, Local 12 (hereafter Local 12) by wrongfully terminating the employment of plaintiff. The complaint further alleges that

defendants Local 12, Dominic J. Mattoni and Booker Harris did not fulfill their responsibility to represent plaintiff fairly in that they failed to take his grievance on his discharge to arbitration.

Defendants Local 12 and Jeep have moved for summary judgment. In response to the motions, plaintiff moved for oral hearing, for reasonable time for discovery, and for other relief. Plaintiff thereupon served interrogatories upon defendants. Defendants filed opposition to plaintiff's motion for oral hearing, for leave for discovery time and for other relief, whereupon plaintiff filed an affidavit couched in terms of an opposition to the motions for summary judgment. Defendant Jeep responded to the interrogatories, but defendant Local 12 did not. Plaintiff moved for an order compelling Local 12 to answer interrogatories.

The Court considered all of the above

motions, and on July 12, 1979, entered an order overruling in part and sustaining in part plaintiff's motion for oral hearing, for leave for reasonable time for discovery and for other relief. The Court denied plaintiff an oral hearing but granted time for reasonable discovery in that plaintiff apparently was seeking answers to the interrogatories which had been filed. Plaintiff was granted leave for discovery to the extent that it involved obtaining answers of Local 12 to interrogatories, with the Court holding in abeyance the motions for summary judgment. The Court, sua sponte granted plaintiff leave to file an additional opposition to defendants' summary judgment motions within 20 days following the filing of Local 12's answers to interrogatories. Local 12 filed its answers in this Court on August 20, 1979, and to-date plaintiff has not filed addition

opposition to the summary judgment motions. That being so, the Court will consider the summary judgment motions at this time.

It is not disputed that plaintiff was employed as a finish paint sprayer by Jeep from August 29, 1974, until the time of his discharge on October 10,1975. While plaintiff was so employed, he was a member of Local 12. During plaintiff's employment, at least one written warning and four disciplinary layoffs were instituted against him as a result of his chronic absenteeism. (Pltf.Dep.28, 32, 36, 39, 44; Local 12 s.j.mo. Ex. g, d, e, f). The incident which precipitated plaintiff's discharge, however, occurred on October 10, 1975, when his supervisor, Ken Haggerman observed him lifting a chassis from the assembly line carrier in a moment of playfulness and as a test of his strength.

(Pltf.Dep.64, 65; Comp.¶3). Plaintiff was reprimanded by his supervisor, whereupon he turned his attention to bleeding his spray gun to get ready for his next job. (Pltf.Dep.65, 75; Comp.¶3). While discharging the paint from his spray gun, paint was sprayed onto the nearly walls and onto a container of paint thinner which was used for cleaning the guns. (Pltf.Dep.76,78; Comp.¶3). Shortly thereafter, Mr. Haggerman told plaintiff he was fired. (Pltf.Dep.81). The matters are undisputed, nor can it be argued that they do not constitute just cause for discharge of an employee under the company's rules and the collective bargaining agreement. Upon being informed of his termination, plaintiff filed a grievance protesting his discharge. (Pltf.Dep.89; Local 12 s.j.mo.Ex.h). Local 12 took plaintiff's grievance through the third step of the

grievance procedure. However, they did not pursue his grievance through the entire grievance framework and to arbitration. (Aff.Mattoni,Harris,Davis).

In the motion for summary judgment filed by Local 12, it is claimed that summary judgment should be granted in its favor for the following reasons:

(1) That plaintiff's complaint and deposition contain only conclusory allegations which are insufficient to state a claim for breach of duty of fair representation;

(2) That the union did not breach its duty of fair representation by failing to take plaintiff's grievance to arbitration; and

(3) That plaintiff's claim is barred because he failed to exhaust his internal union remedies.

It cannot be disputed that as a general

rule, a prerequisite to suit under 29 U.S.C. Sec. 185 for breach of duty of fair representation is the exhaustion of intra-union remedies. Ruzicka v. General Motors Corp., 523 F.2d 306 (6th Cir.1975); Bsharah v. Eltra Corp., 394 F.2d 502 (6th Cir.1968). Article 33, Sec. 12 of the Constitution of the UAW International Union provides:

> It shall be the duty of any member or subordinate body who feels aggrieved by any action, decision, or penalty imposed upon him or it, to exhaust his or its remedy and all appeals therefrom under the laws of this International Union prior to appealing to a civil court or governmental agency for redress.

There is no doubt that plaintiff has failed to exhaust his intra-union remedies.

As with most rules, there are exceptions to the rule requiring exhaustion of intra-union remedies. For instance, one is not limited to the exclusive remedial procedures established by the collective

bargaining agreement when the conduct of his employer amounts to repudiation of those contractual procedures. Vaca v. Sipes, 386 U.S.171(1967). Additionally, one may bring suit when the union has the sole power under the contract to invoke the higher stages of the grievance procedure, and the member is prevented from exhausting his contractual remedies by the union's wrongful refusal to process a grievance. Id. Finally, one will not be required to exhaust his intra-union remedies where the effort to so proceed would be wholly futile. Glover v. St. Louis-San Francisco Railway Co., 393 U.S. 324(1968). In this case, the Court does not find that any of the above stated exceptions apply. There was no attempt on the part of defendants to repudiate contractual procedures, the appeal procedure available to plaintiff was not totally within the control of the union, and there is no allegation that the

exhaustion of intra-union remedies would have been futile.

Plaintiff's complaint claimed that he sought intra-union appeals but that such appeals were "buried," or would have taken more than six months for action, contrary to 29 U.S.C. Sec. 411. Plaintiff's deposition and affidavit filed in opposition to the summary judgment motions, however, claim that no appeals were filed, the reason being that plaintiff thought the process would take too long and that his lawyer had told him he had no right to take an appeal.

Focusing on the specifics of what transpired after plaintiff filed his grievance with Local 12, the Court notes that plaintiff apparently became dissatisfied with how the union officials were handling his grievance and retained a lawyer through Legal Aid to act on his behalf. (Pltf. Dep. 100-01). Plaintiff claimed that when Local 12 decided

not to take his grievance further, he was not notified by the union personally, but by his legal aid counsel (Pltf. Dep.101). Plaintiff claims that he did not learn from his attorney that Local 12 had ceased action on his grievance until after his 30-day appeal time to Local 12 had expired. (Pltf.Aff. ¶8). The Court is reluctant to criticize Local 12 for not serving notice of the termination of plaintiff's grievance on him personally, since he had engaged a lawyer to represent him and his lawyer was so notified. While there appears to be a question as to whether plaintiff's lawyer received notice within a 30-day period or simply failed to transfer the information to plaintiff within that time (Pltf.Aff. ¶8;Pltf.mo. to compel discovery,p.2), such a fact is not material to the Court's consideration herein, for when plaintiff became aware of the status of his grievance,

even if it was beyond the 30-day time for local appeal, he had an appeal to the International Union which he did not pursue. Plaintiff raises no allegations that Local 12 tried to block his appeal to the International Union. Rather, the record indicates that it was plaintiff's legal aid attorney who felt it was unnecessary to proceed via the union channels when plaintiff's grievance was denied. (Pltf.Dep. Ex.k).

The record indicates that subsequent to plaintiff's dealings with his attorney from legal aid, he retained other counsel who contacted Local 12 regarding a local appeal, was informed that the time limitations had expired for such an appeal, and that any further appeal was to be made to the UAW International Union. (Pltf.Dep. 108; Ex. k,l,m,n; Jeep s.j.mo.Ex.n). Plaintiff's attorney contacted the Public Review Board of the International Union for information

regarding an apparent appeal, and such information was provided. However, the evidence is undisputed that plaintiff never instituted any type of appeal proceeding with the International Union. (Howard letter of 10/5/76; Klein letter of 10/12/76; aff.Klein,Beckham).

When looking at the circumstances of plaintiff's grievance from the vantage point of intra-union exhaustion requirements, it is clear that we are not dealing with a situation such as that which existed in Ruzicka v. General Motors Corp., supra, wherein a union, with no decision on the merits of a grievance, allowed a grievance deadline to pass without giving notice of that fact to either the employee or the employer. In this case, while there is some question as to the notice which plaintiff received, it is clear that there was a decision on the merits of plaintiff's

grievance before Local 12 decided not to pursue plaintiff's grievance further. (Aff. Davis,Harris and Mattoni). Furthermore, in the Ruzicka case, the claimant therein had sought intra-union relief to remedy his situation and processed his complaint through 27 months of intra-union proceedings giving the union "at least some opportunity" to resolve its dispute with him before instituting an action in federal court. Id. at 312. It is clear that plaintiff herein sought no intra-union appeal of any kind after learning that his grievance would be pursued no further by Local 12.

Nor can the instant situation be compared to that set forth in Ruggirello v. Ford Motor Co. 411 F.Supp.758(E.D.Mich. 1976), cited by plaintiff, where the grievant's failure to exhaust his intra-union remedies was caused by misrepresenta-

tions made by union officials. In the case before this Court, there is no indication, nor facts to support an assertion, that union officials made any representations to plaintiff. In fact, the record indicates that if a misrepresentation was made to plaintiff, it was apparently done by the attorney from legal aid whom he had contacted to help him with his grievance.

The Court notes that with respect to knowledge which plaintiff had of remedies available to him, plaintiff does not deny that he received copies of Solidarity, a union publication in which internal union remedies were explained, as well as the union constitution and by-laws which expressly set forth the avenues which plaintiff could pursue on appeal. In view of the totality of all the circumstances stated above, this Court does not find that

the well-thought-out requirement of exhaustion of intra-union remedies should be waived in this instance. Therefore, the Court finds that plaintiff should be precluded from proceedings with this action since had has failed to exhaust his intra-union remedies.

It is well settled that as the exclusive bargaining representative of plaintiff, Local 12 had a statutory duty to fairly represent him. However, proof of unfair representation requires a showing that "a union's conduct toward a member of the collective bargaining unit is arbitrary, discriminatory, or in bad faith." Vaca v. Sipes, supra at 190. While it is not necessary for the Court to pursue the remaining claims raised by Local 12, the Court herein notes that Local 12's failure to take plaintiff's grievance to arbitration cannot, in and of itself, be considered a breach of duty of fair representation. Id.

at 191. There is no obligation for a union to arbitrate grievances it believes are not meritorious. In this case, there appears to be clear support for the union decision not to pursue plaintiff's grievance to arbitration. Furthermore, as to plaintiff's assertion as to fairness, good faith and motivations of the defendants with respect to his grievance proceedings, the Court notes that there is merit to the claim of the defendants that plaintiff's complaint and supporting documents contain only conclusory allegations which are insufficient to state a claim for breach of duty of fair representation. See Balowski v. UAW, 372 F.2d 820 (6th Cir. 1967).

Defendant Jeep has also filed for summary judgment in this action. To prevail against a company in an instance such as this, plaintiff has the burden of demonstrating that his discharge was in

violation of the collective bargaining agreement. Hines v. Anchor Motor Freight, 424 U.S.554(1976). A review of the record herein, however, can lead the Court to no other conclusion than that plaintiff was fired for cause. The Court further notes that in the instant action, only generalized allegations exist in the record which are not supported by plaintiff with appropriate facts. The Court finds that the motions of defendants for summary judgment are well taken.

THEREFORE, for the reasons stated, good cause appearing, it is

ORDERED that the motion of Local 12 for summary judgment be, and it hereby is, SUSTAINED, and the clerk shall enter judgment in accordance herewith; and it is

FURTHER ORDERED that the motion of Jeep for summary judgment be, and it hereby is, SUSTAINED, and the clerk shall enter judgment in accordance herewith.

IT IS SO ORDERED.
/s/ Don J. Young
United States District Judge

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

Civil No. C 77-562

Gerald V. Conrod, Jr.,

Plaintiff,

vs.

International Union, United Automobile, Aerospace, Agricultural Implement Workers of America, UAW Local 12 et al.,

Defendants.

JUDGMENT

FILED: Oct. 15, 1979

Before: Young, Don J.

This action came on for consideration before the Court, Honorable Don J. Young - - - - - -United States District Judge, presiding, and the issues having been duly considered and a decision having been duly rendered,

It is Ordered and Adjudged that summary judgment is hereby entered in favor of the defendant, International Union, United

Automobile, Aerospace, Agricultural Implement Workers of America, UAW Local 12.

Dated at Toledo, Ohio, this 15th day of October, 1979.

James S. Gallas
Clerk of Court

by: Margaret Lewis
Deputy Clerk

APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

Case No. 77-562

Gerald V. Conrod, Jr.,

Plaintiff,

vs.

Jeep Corporation, et al.,

Defendants.

MEMORANDUM AND ORDER

FILED: Oct. 31, 1980

Before: YOUNG, J.

This cause came to be heard upon the filing of several motions by the plaintiff in this action. Pursuant to Fed. R. Civ. P. 59(a) and (e), the plaintiff has moved that this Court vacate the judgments of dismissal which have been entered in this case and allow him to go forward. In the alternative, plaintiff moves that this Court amend such judgments of dismissal so

as to be without prejudice. The plaintiff has also moved to compel answers to interrogatories and for leave to file the affidavit of one Harold B. Penson. Jeep Corporation (hereinafter "Jeep") and United Automobile, Aerospace and Agricultural Implement Workers of America, Local 12 (hereinafter "Local 12"), defendants in this action, have opposed such motions of the plaintiff.

On October 15, 1979, this Court sustained the motions of defendants Jeep and Local 12 for summary judgment. It is the judgments entered on behalf of the Court's disposition of such motions on which the instant motions are based. On July 12, 1979, the Court first considered the summary judgment motions of the defendants along with other motions which were pending in the case. Upon review of the summary judgment motions and plaintiff's affidavit

couched in terms of an opposition to such motions of the defendants, in the interest of justice, the Court reserved ruling on same, and granted plaintiff leave for discovery, in that he could obtain answers to interrogatories which had been served on Local 12. The Court further, sua sponte, granted plaintiff leave to additionally oppose defendants' summary judgment motions within 20 days of the filing of Local 12's interrogatory answers. Local 12 responded to the plaintiff's interrogatories on August 20, 1979. Pursuant to Court order, plaintiff's opposition to the summary judgment motions was due September 10, 1979. No such opposition was forthcoming. This Court thereby, on the basis of the documents before it, ruled on the summary judgment motions of the defendants' on October 15, 1979, sustaining them and entering judgment on behalf of Local

12 and Jeep.[1]

Now that judgment has been rendered against the plaintiff in this action, he has approached the Court with numerous motions and voluminous documents in an attempt to have the judgments vacated and apparently, to offer opposition to the defendants' summary judgment motions. In July of 1979, the Court gave plaintiff a second opportunity to oppose the summary

1. As plaintiff points out, at 4:25 P.M. On Friday, October 12, 1979, plaintiff filed a pretrial brief with this Court, in response to an October 1, 1979, Court order, in which he was given notice of a pretrial conference and ordered to file a brief. In the body of the brief, plaintiff said he intended to ask that this action be held in abeyance so that further discovery and union appeal attempts could be pursued. At 9:24 A.M. on Monday, October 15, 1979, the Court docketed its opinion and order sustaining the defendants' summary judgment motions. The pretrial brief of the plaintiff was not reviewed by the Court as opposition to the defendants' motions since it was neither couched in such terms nor timely filed.

judgment motions of Local 12 and Jeep, which were filed in late 1978. The plaintiff, however, did not take advantage of such opportunity, and now, after final disposition of the action, is approaching the Court with matters which should have been previously raised. The Court understands that attorneys are busy and that the demand of other work often makes it impossible for counsel to meet certain time restraints. That is why motions for extensions of time exist, and should an attorney find himself in a difficult position with respect to meeting a deadline, he must so inform the Court rather than simply doing nothing, indicating a response is not intended.

The matters with which the plaintiff now approaches the Court raise some new conclusory allegations, but essentially embellish the evidence and allegations which

have been previously filed herein. In the October 15, 1979 order, the Court considered the merits of this action and found that the plaintiff was precluded from proceeding with this action against Local 12 since he had failed to exhaust his intra-union remedies. The Court further concluded therein that the plaintiff was fired by defendant Jeep for good cause. Upon careful review of the proceedings herein, the Court is not disposed to disturb its prior rulings and the resultant judgment entries. Very recently, the plaintiff has apparently instituted appeal proceedings with the International Union for his alleged wrongful dismissal. This was something which should have been done prior to the initial filing of this action. In fairness to all the parties involved in the lawsuit, the Court will not amend the judgments in this case so as to be without

prejudice.

Therefore, for the above stated reasons, good cause appearing, it is

ORDERED that the plaintiff's motions pursuant to Fed.R.Civ.P. 59(a) and (e) and to compel answers to interrogatories should be, and hereby are OVERRULED; and it is

FURTHER ORDERED that the plaintiff's motion for leave to file an affidavit should be, and hereby is, OVERRULED.

IT IS SO ORDERED.

/s/ Don J. Young
Sr.United States District Judge

Toledo, Ohio.

APPENDIX F

SELECTED PARTS OF RULES, FEDERAL RULES OF CIVIL PROCEDURE

Rule 1 "....they shall be construed to secure the just, speedy, and inexpensive determination of every action."

Rule 15(b) Amendments to Conform to the Evidence.

"When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him in maintaining

his action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence."

Rule 54(c) Demand for Judgment

"A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment. Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings."

Rule 56(c) Motion and Proceedings Thereon

"The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages."